IN THE

Supreme Court of the United States

OCTOBER TERM 1940

No. 132

LOCAL 807, etc., et al.,

Petitioners,

against

UNITED STATES OF AMERICA.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT AND BRIEF IN SUPPORT THEREOF

LOUIS B. BOUDIN,
EDWARD C. MAGUIRE,
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Counsel for Petitioners.

INDEX

	PAGE
PETITION	1
A. Statement of the Matter Involved	2
B. The Statute Involved	4
C. The Basic Facts	5
D. Questions Presented	6
E. Reasons Relied on for the Allowance of the Writ	7
BRIEF	9
I. Opinions Below	9
II. Jurisdiction	9
III. Statement of the Case	10
IV. Specifications of Error	10
V. Argument	11
A. Constitutionality	11
B. The intentions of Congress generally	14
C. The intention of Congress to exclude labor disputes from the operation of the Act	15
D. Voluntary unincorporated associations are not within the purview of the Anti-Racketeering Act	16
E. The indictment herein was clearly insufficient, and repugnant to constitutional guarantees against double jeopardy	17

TABLE OF CASES

	PAGE
Apex Case	16
Bartell v. U. S., 227 U. S. 427	20
Commonwealth v. Eastman, 55 Mass. 189	20
Lambert v. People, 9 Cowan 578	20
Martin v. U. S., 168 Fed. Rep. 498	20
Messenger's Merchants Lunch Room, Inc., In re, 85 F. (2d) 1002	17
People v. Corbalis, 178 N. Y. 516	21
People v. Gould, 347 Ill. 298, 179 N. E. 848	17
People v. Kane, 161 N. Y. 380	21
People v. Zambounis, 251 N. Y. 94	21
Rosen v. U. S., 161 U. S. 29	20
Stowe v. Ryan, 135 Ore. 371, 296 Pac. 857	17
United States v. Gramlich, 19 Fed. Supp. 422	19, 20

TABLE OF STATUTES

Anti-Racketeering Act—18 U. S. C. A.:	
Sec. 2	4, 10
Sec. 2, subd. (a)	6, 8, 15
Sec. 6	1, 6, 15
Sec. 420 a	2
Judicial Code:	
Sec. 240(a)	2, 9
Sherman Anti-Trust Act—15 U. S. C. A.:	
Sec. 1	2
United States Constitution:	
Article I, Section 8	11
Article III, Section 3	12
Article IV, Section 4	12

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UNITED STATES OF AMERICA

vs.

LOCAL 807 OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMEN & HELPERS OF AMERICA; WILLIAM CAMPBELL; AUSTIN FUREY; GEORGE BAGLEY; JOSEPH BENDER; MICHAEL CAHILL; JOSEPH DEEGAN; ROBERT DILLON; FRANK DOWNS; JOHN GAUGHAN; JOHN HORAN; ANDY JAKAKAS; ABRAHAM KLENOFSKY; LEONARD LA MARNE; MANUEL MAGAN; JAMES MURPHY; GEORGE NEEDELMAN; BERNARD L. RANDAZZO; SAMUEL REICHLER; MORRIS REICHLER; HARRY ZOLLINGER; THOMAS SHARKEY; WILLIAM SIMPSON; TONY VENDITTI; PETER WASKIEWICZ; EDWARD WEINHEIMER and JOHN WEINHEIMER.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petitioners, Local 807 of the International Brotherhood of Teamsters, Chauffeurs, Stablemen & Helpers of America (hereinafter referred to as "Local 807"), William Campbell, Austin Furey, George Bagley, Joseph Bender, Michael Cahill, Joseph Deegan, Robert Dillon, Frank Downs, John Gaughan, John Horan, Andy Jakakas, Abra-

ham Klenofsky, Leonard LaMarne, Manuel Magan, James Murphy, George Needelman, Bernard L. Randazzo, Samuel Reichler, Morris Reichler, Harry Zollinger, Thomas Sharkey; William Simpson, Tony Venditti, Peter Waskiewicz, Edward Weinheimer and John Weinheimer, respectfully pray that a *writ of certiorari* issue to review so much of the decision of the United States Circuit Court of Appeals for the Second Circuit rendered in the above action, and the order entered thereon in the office of the Clerk of the said Court, as denied the motion of these petitioners to dismiss the indictment against them in the above entitled matter.

A

Statement of the Matter Involved

Petitioner Local 807 is a voluntary unincorporated association and a bona fide labor organization within the meaning of the Act of June 16, 1934, commonly known as the Anti-Racketeering Act (18 U. S. C. A., Sec. 420-a et seq.); and the individual petitioners are officers and members thereof.

On or about May 31, 1938, the petitioners were indicted in the District Court for the Southern District of New York for alleged violations of the said Anti-Racketeering Act; and also, by a separate indictment, for an alleged violation of Section 1 of the Act of July 2, 1890, commonly known as the Sherman Anti-Trust Act (15 U. S. C. A., Sec. 1). The indictment under the last mentioned Act contained one count, and the indictment under the Anti-Racketeering Act contained four counts. All of the four counts in the Anti-Racketeering indictment were based on alleged conspiracy to violate the said Act,—no substantive violation being charged; and all of the said four counts charged *the same* conspiracy. The petitioners duly demurred to both of the said indictments, but their demurrers were overruled. The said two indictments were thereupon,

on the motion of the United States of America, consolidated for trial, over the objection of the petitioners, and the petitioners were compelled to go to trial on the said indictments as so consolidated.

A trial of the petitioners under the two indictments was thereupon had; and the said trial resulted in the conviction of all of the petitioners under the indictment charging a violation of the Sherman Anti-Trust Act; and in the conviction of all the petitioners under the first count of the indictment under the Anti-Racketeering Act, of some of them on the second count of the said indictment, and of some others, including Local 807, on all of the four counts of that indictment. The petitioners thereupon appealed to the United States Circuit Court of Appeals for the Second Circuit; and the said appeal resulted in the decision and order hereinbefore mentioned which reversed all of the said convictions, but failed to dismiss the indictments, contrary to the plea of the petitioners. The said indictments are now still pending in the said District Court for the Southern District of New York and the petitioners are liable to be called for trial thereon.

The reversal of the conviction under the Sherman Act was by a unanimous court, while the reversal under the Anti-Racketeering Act was dissented from by one of the judges of the said Circuit Court of Appeals. The disagreement between the majority and the minority of the said Circuit Court of Appeals was due to a disagreement on the interpretation to be placed upon the Anti-Racketeering Act; and the two judges composing the majority of the court disagreed in certain respects as to the exact meaning of the said Act.

B

The Statute Involved

The salient provisions of the said Anti-Racketeering Act are as follows:

"SEC. 2.

Any person who, in connection with or in relation to any act in any way or in any degree affecting trade or commerce or any article or commodity moving or about to move in trade or commerce—

(a) Obtains or attempts to obtain, by the use of or attempt to use or threat to use force, violence, or coercion, the payment of money or other valuable considerations, or the purchase or rental of property or protective services, not including, however, the payment of wages by a bona fide employer to a bona fide employee; or

(b) Obtains the property of another, with his consent, induced by wrongful use of force or fear, or under color of official right; or

(c) Commits or threatens to commit an act of physical violence or physical injury to a person or property in furtherance of a plan or purpose to violate subsections (a) or (b); or

(d) Conspires or acts concertedly with any other person or persons to commit any of the foregoing acts, shall, upon conviction thereof, be guilty of a felony and shall be punished by imprisonment from one to ten years or by a fine of $10,000, or both."

"SEC. 6.

Any person charged with violating this Act may be prosecuted in any district in which any part of the offense has been committed by him or by his actual associates participating with him in the offense or by his fellow conspirators: *Provided*, That no court of the United States shall construe or apply any of the provisions of Sections 420a to 420e of this title in such

manner as to impair, diminish, or in any manner affect the rights of bona fide labor organizations in lawfully carrying out the legitimate objects thereof, as such rights are expressed in existing statutes of the United States."

C

The Basic Facts

Petitioner Local 807 consists of motor truck drivers in the City of New York, and is one of a number of local unions consisting of such drivers in the said city; the division being along the lines of the industries in which their respective members are employed; and all of them being part of the International Brotherhood of Teamsters, Chauffeurs, Stablemen & Helpers of America. Local 807 has a membership of about 10,000, about 3,000 of whom are engaged in what is known as over-the-road trucking,—the commerce mentioned in the indictment. The conduct of the petitioners upon which both indictments were based consisted in the fact that Local 807 insisted that only its members could drive trucks within the City of New York; and that, allegedly, in carrying out the said policy of Local 807, the individual petitioners used force or violence or the threat thereof. The Government's claim was thus stated by the United States Attorney in his opening to the jury:

> "The indictment further charges that by reason of this abuse by the defendant Local 807 these drivers who brought the trucks into the city were compelled themselves to stay idle while the trucks were here because of the demand of this local *that their men exclusively be allowed to drive these interstate trucks while they were within the city.* * * *
>
> * * * Our proof will have to do with interference by violence, with threats to commerce by union men of this New York City Local 807, to union men of the same international union but from locals in other states, and with the damage and loss to our trade and commerce incident to that interference and *with the*

insistence by this New York local, notwithstanding the fact that these interstate trucks were in many instances being driven by union men, *that those trucks be driven in the City of New York only by members of Local 807,* and that those other drivers, union men themselves, would have to step down, turn over their trucks, *and be idle in order to allow the 807 men to drive those trucks within the City of New York"* (Record, fols. 523, 530). (Italics supplied.)

D

Questions Presented

The questions presented by the case and of which review is sought by this petition are as follows:

1. Is the Anti-Racketeering Act, so called, as construed and applied by the District Court, in so far as the same was upheld by the Circuit Court of Appeals, constitutional?

2. Is the Anti-Racketeering Act applicable to a situation such as is presented in this case, in view of the *proviso* contained in Section 6 thereof?

3. Is the Anti-Racketeering Act applicable to a situation like that presented in the case at bar in view of the exception as to wages contained in subdivision (a) of Section 2 thereof?

4. Can a person be tried and convicted as for two or more offenses as a result of one single conspiracy to violate the Anti-Racketeering Act?

5. Is a voluntary unincorporated association, such as Local 807, a "person" within the meaning of the Anti-Racketeering Act?

6. Is an indictment for a conspiracy to violate the Anti-Racketeering Act good, where it neither alleges any overt act nor states that the defendants conspired to obtain money from a certain person contrary to its provisions?

E

Reasons Relied on for the Allowance of the Writ

One of the questions presented involves the interpretation of the Constitution of the United States as to the distribution of powers between the Federal and State governments. Another presents the question of a violation of the constitutional guaranty against double jeopardy. The remaining questions are questions of statutory construction of the greatest importance in the administration of the criminal laws of the United States.

The convictions herein were the first under the statute involved; and, aside from two short opinions in District Courts, not covering any of the points intended to be raised on this appeal, the opinions below are the only judicial interpretations of the statute involved; and, as already stated, these opinions are in utter disagreement each with the others.

The statute itself is not only of very great importance to the labor movement of this country, but is also of the greatest importance generally because of its extraordinary character. As is shown further below in the accompanying brief, the statute is, indeed, of a revolutionary character,—in that it is the first time that Congress has enacted a statute dealing with acts of violence as such in a matter not within its exclusive jurisdiction. It is also a complete departure from the previous policy of Congress, as disclosed by previous legislation, to provide safeguards against double jeopardy where the situation involved was such that both the Federal and the State governments had jurisdiction in the premises.

We also believe, as shown in the accompanying brief, that the construction of the statute involved in the failure to dismiss the indictment is clearly contrary to the intention of Congress as shown in the exception contained in sub-

division (a) of Section 2 with respect to wages, and, particularly, as shown by the *proviso* contained in Section 6.

We also believe, as pointed out in the accompanying brief, that the form of the indictment in this case clearly violates a basic principle of our law with respect to double jeopardy, which principle is embodied in an express guarantee of the United States Constitution.

Your petitioners verily believe that this application presents a case cognizable under the rules of this Honorable Court, and one eminently proper for review by this Honorable Court.

WHEREFORE, your petitioners respectfully pray that a *writ of certiorari* be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Second Circuit, commanding that Court to certify and to send to this Court for its review and determination, on a day certain to be therein named, a transcript of the record upon which its said decision and order were made, and that the said order of the Circuit Court of Appeals may be modified by this Honorable Court so as to provide that the said indictment so pending in the District Court for the Southern District of New York be dismissed, and that your petitioners may have such other and further relief in the premises as to this Honorable Court may seem just and proper.

And your petitioners will ever pray, etc.

Dated, May 26, 1941.

LOUIS B. BOUDIN,
EDWARD C. MAGUIRE,
JAMES D. C. MURRAY,
of Counsel for Petitioners.

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BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I

Opinions Below

The opinions below have not yet been reported.

II

Jurisdiction

Petitioners seek a review by *certiorari* pursuant to Judicial Code, Section 240(a), as amended by the Act of Feb-

ruary 13, 1925, Chap. 229, Sec. 1, 43 Stat. 938 (U. S. C. Tit. 28, Sec. 347[a]). The date of the order sought to be reviewed is May 1, 1941.

III

Statement of the Case

A summary statement of the case has been given in the foregoing petition for the *writ of certiorari*, and for brevity the statement is not repeated here.

IV

Specifications of Error

The Circuit Court of Appeals erred in holding—

(a) That the indictment based upon the Anti-Racketeering Act under which the petitioners herein were tried and found guilty in the District Court for the Southern District of New York was sufficient in form under the general principles of our law and was not subject to the objection that it violated the constitutional guarantee against double jeopardy.

(b) That the Anti-Racketeering Act was generally applicable to a situation such as is disclosed by the record in this case,—namely, activities of a bona fide labor union and its officers and members in connection with or growing out of a labor dispute.

(c) That the word "person" used in the first sentence of Section 2 of the Anti-Racketeering Act includes a voluntary unincorporated association such as petitioner Local 807.

(d) That Congress in enacting the Anti-Racketeering Act had intended that its provisions should cover acts and conduct such as were proved against petitioners at the trial of the indictment herein.

(e) That the Anti-Racketeering Act when construed so as to apply to acts and conducts such as were proven against the petitioners herein is constitutional.

V

Argument

A. Constitutionality.

It is not contended that the Anti-Racketeering Act, so called, is incapable of a construction that would save its constitutionality, but merely that as construed by the Court below and applied in this case it is clearly unconstitutional. It must be borne in mind that the Federal Government has no general police powers under the Constitution, and that it is specifically deprived of the power to protect the community against violence (excepted in certain specified cases)—that function being reserved to the States. In this connection the attention of the Court is respectfully called to the fact that we are not dealing here with a case where the reservation to the States results from the fact that the power was not expressly granted to the Federal Government. The reservation to the States with respect to the protection of the community against crimes of violence is not an implied one, but an express one, as may be seen from the following:

The subject of crime and violence *is* treated in the Constitution,—and it is treated in a way *to deprive* the Federal Government of the power to deal with the subject, under well-known canons of constitutional interpretation and statutory construction. Article I, Section 8, which contains the grant of legislative power to Congress, contains two paragraphs expressly dealing with the subject, in addition to others which deal with it by implication. These specific provisions are as follows:

> "To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

> "To define and punish Piracies and Felonies committed on the high Seas and Offences against the Law of Nations."

These provisions, we respectfully submit, are *express limitations* upon the power of Congress to deal with the subject of crime,—limiting that power to offenses committed on the high seas and offenses directed against the Government of the United States as such.

Then there is the additional provision in Section 3 of Article III, dealing with the subject of treason, which says:

> "The Congress shall have Power to declare the Punishment of Treason but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person Attainted."

This, we respectfully submit, is not merely a limitation on the manner of punishment of the crime of treason. The specific grant of power is, under familiar rules, a limitation upon the *general power* to deal with the subject of crime. And here, again, the reason for the grant of power is that the offense is one directed against the Government of the United States as such.

The scheme of division of constitutional power is thus clear: *Congress has no power to deal with crime generally;* and the only exceptions permitted are those which are offenses against the Federal Government itself or those committed on the high seas,—both of which necessarily belong within the power of the Federal Government since they are not within the power of the States, and the State could not exercise them under the scheme of government provided by the Constitution. And if that were not enough, there is the specific provision dealing with the subject of *violence*, as distinct from crime generally, contained in Section 4 of Article IV, which reads:

> "The United States shall guarantee to every State in this Union a Republican form of Government, and shall protect each of them against Invasion; and on

Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic violence."

It will thus be noticed that, aside from the general provisions which deprive the Federal Government of the right to deal with crime generally, there is a special provision,—with a carefully provided double-check,—which deprives it of the right to deal with the subject of *violence*. Not only can the Federal Government meddle with that subject only upon the request of the State involved, but the request must come from the Legislature of the State, and only when the Legislature is not in session may the Federal Government act upon the request of the Executive of the State. That indicates the great care which the framers of the Constitution took to guard against the interference of the Federal Government in the domestic affairs of the States under the pretext, or in the mistaken belief, that it was necessary for the suppression of crime or the protection of the citizens against violence.

That does not mean, of course, that Congress may not deal with crime incidentally,—as an incident of the exercise of some power expressly granted to it. But it does mean that the exercise of such power may not be made a pretext for dealing with crime generally. And also that the subject of *violence* is in a class by itself,—so that while Congress may define certain crimes in order to *facilitate* the exercise of the powers granted it by the Constitution, *it cannot deal with the subject of violence except in matters within its exclusive jurisdiction.*

Passing, however, the question whether or not Congress could, under *any* circumstances, deal with the subject of violence under the guise of regulating interstate commerce, we come to the even more important question of the effect of such action by Congress upon the power of the States to deal with crimes of violence in connection with commerce. It is elementary that the right to regulate interstate commerce is exclusive in the Federal Government,—

either absolutely, in the sense that the States can under no circumstances deal with the subject, or qualifiedly, in the sense that the States may deal with the subject only so long as the Federal Government has not occupied the ground. *But whenever the Federal Government has occupied the ground constitutionally the States are deprived of all jurisdiction in the particular field and cannot act even in aid of the action of Congress.* The action of Congress in passing the Anti-Racketeering Act, assuming it to be constitutional, would therefore necessarily oust the States from all jurisdiction in this field. This would amount to such a revolution in the relations between the Federal and State governments that it cannot be assumed to have been intended by Congress, even if we should assume that the power to regulate interstate commerce includes the power to deal with crimes of violence in interstate commerce notwithstanding the reservation in the Constitution quoted above.

B. The intentions of Congress generally.

A careful study of the history of Congressional legislation during the entire existence of our Government under the Constitution reveals two significant facts: First, that at no time up to the enactment of the statute here under consideration had Congress legislated on crimes of violence except with respect to matters within the exclusive jurisdiction of the Federal Government. Second, that at no time during the first century and a quarter of the existence of our government under the Constitution had Congress legislated at all with respect to crime *in* interstate commerce, as distinguished from crime by the *use of* interstate commerce. And third, that whenever Congress undertook to legislate concerning any matter over which it did not have exclusive jurisdiction, it make specific provision for the concurrent jurisdiction of the States, and at the same time provided that a judgment on the merits under the laws of any State should be a bar to any prosecution under the federal law.

But the Act here under consideration neither preserves the jurisdiction of the States, nor does it make any provision against double jeopardy. This can be explained only upon the assumption that Congress believed that it was acting with respect to a matter over which it had exclusive jurisdiction,—that is to say, that Congress intended to legislate not with respect to crimes of violence *in* interstate commerce but with crimes of violence in which interstate commerce is used as a means of accomplishing the crime. And the history of the legislation in question fully bears out that assumption.

Constitutional considerations, the history of Congressional legislation with respect to crime generally, and the history of this particular piece of legislation, all unite to require a construction of the statute which would limit it to cases in which interstate commerce was used as a means of accomplishing the crime,—and that it was therefore not applicable to a situation such as was disclosed at the trial of this case.

C. The intention of Congress to exclude labor disputes from the operation of the Act.

A reading of the record clearly demonstrates that whatever else may be in doubt, there can be no doubt of the fact that the acts charged against the defendants were committed in the course of a labor dispute. And the language of the statute as well as the history of the legislation clearly demonstrate that it was the intention of Congress that labor disputes should be exempt from the operation of this Act in the same way and to the same extent that such disputes are exempt from the operation of the anti-trust laws. The opinion of the majority of the Court below goes part of the way with this contention as the result of its examination of the exception as to wages contained in subdivision (a) of Section 2. But we believe that aside from the exception as to wages, the *proviso* contained in Section 6 clearly shows the intention of Congress to assimilate the Anti-

Racketeering Act to the anti-trust laws with respect to labor disputes. This does not, of course, mean that Congress meant to legalize the use of force and violence in labor disputes, any more than it meant to legalize the use of force and violence in labor disputes by the immunization contained in the Clayton Act, *from which the proviso in this Act was clearly borrowed.* All that Congress intended to do in both cases was to leave the punishment of violence to the ordinary criminal laws of the States, which Congress deemed sufficient for the purpose. Any other reading of the *proviso* would reduce it to an absurdity.

That the acts charged against the petitioners were not sufficient to bring them within the operation of the anti-trust laws, notwithstanding the fact that they affected interstate commerce, was *unanimously decided* in this very case by the Circuit Court of Appeals in the very decision sought to be reviewed here. As stated in the petition for *certiorari*, the petitioners herein were indicted under two indictments, one based on the Anti-Trust Act and the other based on the Anti-Racketeering Act. These indictments were then consolidated for trial and one trial had, the record of which is before this Court. Concededly, both indictments were based on the same single conspiracy, and supported by the same set of facts. The Circuit Court of Appeals, following the decisions of this Court in the *Apex* case, held that those facts did not constitute an offense under the Sherman Act, because of the *proviso* contained in the Clayton Act. The same result must follow a proper construction of the proviso in this Act.

D. Voluntary unincorporated associations are not within the purview of the Anti-Racketeering Act.

The statute under consideration begins with the words "*Any person who*", etc. And it is well settled that in the criminal law "person" means a natural person unless expressly otherwise stated. And we may add, that it is very

seldom, if ever, "otherwise stated" in connection with crimes of violence. Indeed, "person" is presumed to mean a natural person in *any* statute in the absence of an express provision to the contrary, unless the nature of the law and the context in which the word is used clearly indicate,—perhaps we should say compel,—a contrary interpretation.

In re Messenger's Merchants Lunch Room, Inc., 85 F. (2d) 1002;
Stowe v. *Ryan*, 135 Ore. 374, 296 Pac. 857;
People v. *Gould*, 347 Ill. 298, 179 N. E. 848.

Judge Clark in his concurring opinion agreed with our contention. The other two judges did not say anything to the contrary, but by their failure to dismiss the indictment against Local 807 they apparently *held* the contrary.

E. The indictment herein was clearly insufficient, and repugnant to constitutional guarantees against double jeopardy.

The demurrer to the indictment herein raised, among others, the objections that (a) the indictment failed to allege any overt act, and (b) that it failed to allege that the defendants conspired to commit a particular act within the purview of the statute.

We believe both of these objections to be well taken, but shall limit ourselves here to the nature of our argument with respect to the second point, which raises a question of great constitutional import.

As already stated, none of the four counts of the indictment under the Anti-Racketeering Act charges any substantive offense,—each charging a conspiracy, and all four charging the same conspiracy. But the conspiracy charged is not a conspiracy to commit a *particular act*,—that is to say, a conspiracy to obtain money or property from a person or persons therein named. Instead, the indictment under the Anti-Racketeering Act follows the form of the

indictment under the Sherman Act and merely alleges that the defendants conspired to obtain money from truckers engaged in interstate commerce. It is our contention that while such form of indictment is permissible under the Sherman Act, the situation is quite different in an indictment under the Anti-Racketeering Act; and that an indictment under the latter Act requires a charge of conspiracy to obtain money from a person named, both under general principles of criminal law and as a matter of constitutional law.

It is clear that an indictment for the substantive offense would have to allege that the defendants had obtained money or property from a particular person; and that an indictment that the defendants obtained money from an unnamed trucker would be fatally defective. And an indictment which merely alleges that the defendants conspired to obtain money from an unnamed trucker, or a group of truckers none of whom are named, is fatally defective for the same reason that would make that form of indictment improper in an attempt to charge the substantive offense. In this respect an indictment under the Anti-Racketeering Act is wholly different from an indictment under the Anti-Trust Act, which seems to have been the source of confusion. The substantive offense under the Sherman Act is the monopolization or restraint of *commerce*. An allegation that the defendants had monopolized or restrained commerce would therefore charge the substantive offense. And, for the same reasons, an allegation that the defendants had conspired to monopolize or to restrain commerce would be sufficient to sustain a charge of conspiracy under the Sherman Act as a question of general law and statutory construction. And the nature of the offense also saves that form of indictment under the Sherman Act from the objection that it exposes the defendants to double jeopardy. There can be no more than one offense under the Sherman Act for the monopolization or restraint of a particular branch or portion of

commerce during a given period of time. When, therefore, the indictment alleges that the defendants monopolized or restrained a particular branch or portion of commerce during a particular period of time, or that they had conspired to do so, the trial of the defendants under such indictment sufficiently protects them against the possibility of their being tried again for the same offense, for the indictment upon its face shows the offense for which they had been tried.

But the situation is entirely different in an indictment under the Anti-Racketeering Act. While there can be only one monopolization or restraint of a particular branch or portion of commerce during a given period of time, there can be innumerable cases of obtaining money or property by force or violence in any branch or portion of commerce,—each constituting a separate offense for which the guilty person or persons may be tried and convicted. An indictment for the substantive offense must, therefore, name the person or persons from whom the money or property had been obtained, so that the defendants may not, after the disposition on the merits of the present indictment, be tried again for the same offense. And for the same reason an indictment for conspiracy to commit an offense under the Anti-Racketeering Act must charge that the defendants had conspired to obtain money or property by the prohibited means from a person or persons named, if the defendants are not to be exposed to double jeopardy. We respectfully submit that an indictment under the Anti-Racketeering Act must be in the form of that in the *Gramlich* case, which charged that the defendants—

> "did then and there knowingly, wrongfully, wilfully, unlawfully and feloniously conspire and act concertedly with each other to obtain valuable considerations from the Peabody Coal Company, Valier Coal Company, Bell & Zoller Coal & Mining Company, Old Ben Coal Company (hereinafter called operators), which at all times hereinafter mentioned have been engaged in the mining and production of coal in the

State of Illinois for shipments to States other than the State of Illinois by the use of and threat to use force, violence and coercion" etc.

(See: Indictment, *United States* v. *Gramlich*, 19 Fed. Supp. 422.)

Any other form, we respectfully submit, not only violates basic principles of criminal law but also violates the constitutional guarantee against double jeopardy. It is clear that if the indictment in the *Gramlich* case had merely charged, as the indictment herein *does*, in effect, that the defendants—

> "did then and there knowingly • • • conspire and act concertedly with each other to obtain valuable considerations from divers coal operators • • •"

there would have been nothing to indicate that the indictment under consideration was based upon the obtaining of money by the prohibited means from the companies actually named in the indictment. And in the event of a disposition of that indictment on the merits, there would have been nothing on the face of the indictment itself to show that the defendants had been indicted for obtaining money from the particular companies named and *that* case disposed of on the merits.

Such a situation, we respectfully submit, is contrary to our constitutional guarantees against double jeopardy. Under well-settled principles of our constitutional law, the constitutional guarantee against double jeopardy requires that the indictment must be in a form that the mere comparison of the two indictments will show whether or not the defendant is being exposed to double jeopardy.

Rosen v. *U. S.*, 161 U. S. 29;
Bartell v. *U. S.*, 227 U. S. 427;
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